

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the
Verified Application of
Brenda Jean Horton to the
Contractor Recovery Fund

**ORDER GRANTING DEPARTMENT'S MOTION
FOR SUMMARY DISPOSITION, DENYING
CLAIMANT'S CROSS MOTION, AND
AFFIRMING DENIAL OF RECOVERY FROM
THE CONTRACTOR RECOVERY FUND**

This matter is pending before Administrative Law Judge Barbara L. Neilson on the parties' Cross Motions for Summary Disposition. Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (Department). Brenda Jean Horton (Claimant) appeared without counsel on her own behalf.

Based upon all the record in this matter, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

The Department's Motion for Summary Disposition is GRANTED;

1. The Claimant's Motion for Summary Disposition is DENIED; and
2. The Department's decision to deny Claimant's application for compensation from the Contractor Recovery Fund is AFFIRMED.

Dated: February 28, 2014.

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 326B.89, subd. 8, this Order constitutes the final decision of the Commissioner of Labor and Industry in this matter. Judicial review of this Order shall be in accordance with sections 14.63 to 14.69.

MEMORANDUM

I. Factual Background

The material facts are not disputed. On or about September 4, 2007, the Claimant entered into a contract with Allen Woolhouse d/b/a Al Woolhouse Construction and Garages Unlimited (Woolhouse) to perform residential remodeling on her premises in Big Lake, Minnesota. An addendum was added to the contract in November of 2007 to include other improvements to the Claimant's property. The total amount of the contract as amended was \$66,408.¹

On June 27, 2008, prior to completing the Claimant's project, Woolhouse filed a voluntary petition in bankruptcy under Chapter 13 of the Bankruptcy Code. During the course of the bankruptcy matter, several creditors obtained relief from the automatic stay of proceedings to conduct various legal proceedings.²

Big Lake Lumber, Inc., was one of the materials suppliers for Woolhouse on Claimant's project. On or about July 7, 2008, Big Lake Lumber filed a mechanic's lien statement in Sherburne County against the Claimant's property.³ On December 23, 2008, Big Lake Lumber filed a motion with the Bankruptcy Court to lift the automatic stay imposed by Woolhouse's bankruptcy proceeding in order to enforce its mechanic's lien rights against the Claimant.⁴

On January 15, 2009, the Bankruptcy Court lifted the automatic stay in order for Big Lake Lumber to pursue its mechanic's lien against the Claimant. Thereafter, Big Lake Lumber sued the Claimant and sought a judgment in the amount of \$16,152.11 against her based on materials that it contributed to her project. The Claimant paid \$16,046.11 to Big Lake Lumber on or about May 20, 2009, and the lawsuit against her was dismissed.⁵

On October 1, 2009, the Claimant contacted the Department about her issues with Woolhouse. The Department advised her at that time that she should "file a claim against Mr. Woolhouse and win a judgment" in order to obtain compensation from the Contractor Recovery Fund.⁶

On August 20, 2009, the Bankruptcy Court granted the Claimant's request to be "added as a creditor" in Woolhouse's bankruptcy.⁷

In June of 2011, Woolhouse's bankruptcy was converted to a Chapter 7 liquidation due to noncompliance with the Chapter 13 payment plan. On October 4,

¹ Affidavit (Aff.) of Kelly Cooper, ¶ 3 and Exhibit (Ex.) 1 at FUND 0043-0047 (attached to Department's Motion for Summary Disposition).

² *Id.*, ¶ 3 and Ex. 2.

³ *Id.*, Ex. 1 at FUND 0010.

⁴ *Id.* at FUND 0027-0034, FUND 0038.

⁵ *Id.* at FUND 0022-0025.

⁶ *Id.* at FUND 0005.

⁷ *Id.* at FUND 0005, 0040.

2011, the Bankruptcy Court granted Woolhouse a Discharge of Debtor under Chapter 7 of the Bankruptcy Code. It does not appear that any bankruptcy distributions were provided to the Claimant or any other unsecured creditors.⁸ There is no evidence that the Claimant attempted to lift the bankruptcy stay or otherwise obtain a judgment against Woolhouse before Woolhouse received the discharge under the United States Bankruptcy Code.

On April 18, 2013, Claimant submitted a Verified Application to the Department seeking to recover \$16,046.11 from the Contractor Recovery Fund. In a letter submitted in support of her claim, the Claimant stated, "Since I did not have the resources to hire an attorney to get Relief from Stay from the Bankruptcy Court and then bring a lawsuit against Mr. Woolhouse, I did not file a claim in the local court."⁹

On May 21, 2013, the Commissioner issued an order denying the Claimant's application for recovery from the Contractor Recovery Fund on the grounds that she had not obtained a final judgment against Woolhouse as required by Minn. Stat. § 326B.89, subd. 6.¹⁰ The order gave the following explanation:

It is clear from the information submitted by Ms. Horton that she chose not to pursue this matter during the appropriate time frame, before the bankruptcy was concluded. Unfortunately, Ms. Horton is not eligible to recover from the Fund because she did not obtain a final judgment against her contractor At bottom, the law clearly prohibits Ms. Horton from pursuing a claim with the Contractor Recovery Fund without a final judgment.¹¹

On June 21, 2013, the Claimant filed a letter with the Department in which she appealed the denial of her application, requested a hearing, and provided additional information regarding the reasons for her appeal. Among other things, the Claimant asserted that she had paid both Big Lake Lumber and Woolhouse for the same materials; she had experienced a significant amount of stress during the lien foreclosure action and "had a hard time wanting to deal with this issue"; and the bankruptcy discharge prevented her from attempting to collect a discharged debt from Woolhouse. The Claimant also maintained that Woolhouse's bankruptcy was not yet concluded.¹² Based on the Claimant's appeal, the Department initiated the present contested case proceeding on July 29, 2013.¹³

The Department filed a Motion for Summary Disposition in this matter on August 30, 2013. The Claimant filed a Cross Motion for Summary Disposition on September 26, 2013. Both parties maintain that there are no genuine issues of material fact and each party contends that it is entitled to prevail as a matter of law. The

⁸ *Id.*, Ex. 2.

⁹ *Id.*, Ex. 1 and FUND 0005.

¹⁰ *Id.*, Ex. 3.

¹¹ *Id.*

¹² *Id.*, Ex. 4.

¹³ *Id.*, Ex. 5; Notice and Order for Prehearing Conference.

Department argues that the Claimant's application must be denied because she has not obtained a judgment against Woolhouse and thus cannot establish that she is eligible for compensation from the Fund. The Claimant contends that the Department is incorrect, and asserts that the discharge issued in a related bankruptcy court proceeding meets the statutory requirement of a final judgment against the licensed contractor.

II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.¹⁴ The standards for summary disposition in a contested case proceeding are equivalent to the standards for summary judgment under Rule 56.03 of the Minnesota Rules of Civil Procedure.¹⁵ The Administrative Law Judge may recommend summary disposition of the case or any part of the case “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.”¹⁶ A genuine issue is one that is not a sham or frivolous. A fact is material if its resolution will affect the result or outcome of the case.¹⁷

When considering a motion for summary disposition, the Administrative Law Judge must view the facts in the light most favorable to the non-moving party and resolve all doubts and factual inferences in that party's favor.¹⁸ The moving parties have the initial burden to show that there is no genuine issue concerning any material fact.¹⁹ To successfully resist a motion for summary disposition, the opposing party cannot rely upon general statements or allegations, but must show by substantial evidence that there are specific facts in dispute that have a bearing on the outcome of the case.²⁰ “Substantial evidence” refers to the legal sufficiency of the evidence and not the quantum of evidence.²¹ Speculation alone, without some concrete evidence, is insufficient to survive summary disposition.²² However, if reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.²³

¹⁴ *Pietsch v. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004); Minn. R. 1400.5500 (K).

¹⁵ See Minn. R. 1400.6600 (the Minnesota Rules of Civil Procedure may apply to motions in contested cases as appropriate).

¹⁶ Minn. R. Civ. P. 56.03; *Osborne v. Twin Town Bowl, Inc.* 749 N.W.2d 367, 371 (Minn. 2008) (citing *Anderson v. Dep't of Natural Res.*, 683 N.W. 2d 181, 186 (Minn. 2005)); *Sauter v. Sauter*, 244 Minn. 482, 484-85, 70 N.W.2d 351, 353 (Minn. 1955)

¹⁷ *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996); *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N.W.2d 630, 634 (Minn. 1978); *Highland Chateau v. Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).

¹⁸ *Osborne*, 749 N.W.2d at 371; *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988).

¹⁹ *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

²⁰ *Papenhausen v. Schoen*, 268 N.W.2d 565, 571 (Minn. 1978).

²¹ *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69-70 (Minn. 1997); *Murphy v. Country House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976).

²² *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

²³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986); *DLH, Inc.*, 566 N.W.2d at 69.

III. Legal Analysis

The purpose of the Contractor Recovery Fund is to provide compensation to eligible homeowners and lessees who meet the requirements of the statute; to reimburse the Department for the legal and administrative expenses incurred in administering and defending the fund; to pay for educational or research projects in the field of residential contracting; and to provide information to the public on residential contracting issues.²⁴

The handling of claims under the Contractor Recovery Fund is governed by Minn. Stat. § 326B.89. The statute states that those filing claims for compensation from the Fund bear the burden of proving their eligibility to recover from the Fund by substantial evidence.²⁵ To be eligible, a homeowner or lessee must submit an application to the Commissioner and verify certain information. The language used in the statute mandates, among other things, that all claimants must show that they have obtained a judgment against a licensee:

To be eligible for compensation from the fund, an owner or lessee shall serve on the commissioner a verified application for compensation on a form approved by the commissioner. The application shall verify the following information:

* * *

(2) that the owner or the lessee has *obtained a final judgment* in a court of competent jurisdiction *against a licensee* licensed under section 326B.83;

(3) that the *final judgment was obtained against the licensee* on the grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance that arose directly out of a contract directly between the licensee and the homeowner or lessee that was entered into prior to the cause of action and that occurred when the licensee was licensed and performing any of the special skills enumerated under section 326B.802, subdivision 15;

* * *

(7) the amount of the *final judgment*, any amount paid in satisfaction of the final judgment, and the amount owing on the *final judgment* as of the date of the verified application;

(8) that the owner or lessee has diligently pursued remedies against all the *judgment debtors* and all other persons liable to the *judgment debtor* in the contract for which the owner or lessee seeks recovery from the fund; and

²⁴ Minn. Stat. § 326B.89, subd. 4.

²⁵ *Id.*, subd. 8.

(9) that the verified application is being *served within two years after the judgment became final*.

The verified application must include documents evidencing the amount of the owner's or the lessee's actual direct out-of-pocket loss. The owner's and the lessee's actual and direct out-of-pocket loss shall not include any attorney fees, litigation costs or fees, interest on the loss, and interest on the *final judgment* obtained as a result of the loss or any costs not directly related to the value difference between what was contracted for and what was provided. Any amount paid in satisfaction of the *final judgment* shall be applied to the owner's or lessee's actual and direct out-of-pocket loss. An owner or lessee may serve a verified application regardless of whether the *final judgment* has been discharged by a bankruptcy court. A *judgment* issued by a court is final if all proceedings on the judgment have either been pursued and concluded or been forgone, including all reviews and appeals²⁶

Subdivision 5 of the statute sets forth payment limitations that apply to the Contractor Recovery Fund. Among other things, that subdivision also specifies that the Commissioner “shall only pay compensation from the fund for a *final judgment that is based on a contract directly between the licensee and the homeowner or lessee that was entered into prior to the cause of action and that requires licensure as a residential building contractor or residential remodeler*.”²⁷

Under recognized principles of statutory construction in Minnesota, “[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”²⁸ If possible, “[e]very law shall be construed . . . to give effect to all its provisions.”²⁹ If the words of a statute are “clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”³⁰

In this case, the plain language of the statute applicable to the Contractor Recovery Fund states in a clear and unambiguous manner that, in order to be eligible for compensation from the Contractor Recovery Fund, a homeowner must have:

- a final judgment issued by a court;
- against a person licensed under Minn. Stat. § 326B.83 (i.e., a licensed residential contractor, residential remodeler, residential roofer, or manufactured home installer);
- that was based on the licensee's deceptive or dishonest practices, conversion of funds, or failure of performance; and

²⁶ *Id.*, subd. 6 (emphasis added).

²⁷ *Id.*, subd. 5 (emphasis added).

²⁸ Minn. Stat. § 645.16.

²⁹ *Id.*; see also Minn. Stat. § 645.17(2).

³⁰ *Id.*

- that arose directly out of a contract between the licensee and the homeowner and occurred when the licensee was licensed and performing any of the “special skills” set forth in Minn. Stat. § 326B.802, subd. 15.³¹

The statute also makes it clear that the Commissioner does not have authority to pay compensation from the fund where a claimant has not obtained a final judgment.³²

There is no dispute that Claimant failed to obtain a final judgment against Woolhouse. She contends that the automatic stay in bankruptcy prevented her from obtaining a judgment and that her application should be approved regardless of whether a judgment was obtained. However, the Claimant would have been able to have the Bankruptcy Court lift the automatic stay and thereafter seek the required judgment. The Department contends that bankruptcy courts have “routinely granted petitions from homeowners to lift the bankruptcy stay in order for homeowners to secure judgments against their contractors to be collectible solely from the Fund.”³³ The Claimant admits that the Department informed her during her initial call on October 1, 2009, that she “would have to file a claim against Mr. Woolhouse and win a judgment,”³⁴ but, unfortunately, she did not follow that approach based on her belief that she lacked the necessary resources to hire an attorney.³⁵ The statutory mandate that the Commissioner “*shall* only pay compensation from the fund *for a final judgment* that is based on a contract directly between the licensee and the homeowner”³⁶ makes it clear that the Department has no authority to waive the requirement that the claimant have a judgment in his or her favor.

The Claimant’s arguments that other events should be deemed to satisfy the requirement to obtain a “judgment” are not persuasive. The Discharge of Debtors issued by the Bankruptcy Court was granted to the person named as the debtor (Woolhouse) and eliminated his legal obligation to pay certain debts that existed on the date his bankruptcy case was converted to a Chapter 7 case.³⁷ In the lien foreclosure action against the Claimant by Big Lake Lumber, the parties reached a settlement and no judgment was entered by the court. Moreover, the settlement was in favor of Big Lake Lumber, not the Claimant, and the issue was the validity of the mechanic’s lien, not the Claimant’s remodeling contract with Woolhouse. Neither the grant of a discharge to Woolhouse nor the Big Lake Lumber litigation amounts to a “judgment” within the meaning of the statute because they do not reflect a final court judgment *against Woolhouse in favor of the Claimant ordering Woolhouse to pay Claimant a sum*

³¹ The “special skills” are defined in Minn. Stat. § 326B.802, subd. 15, to include excavation; masonry and concrete; carpentry; interior finishing; exterior finishing; drywall and plaster; residential roofing; or general installation specialties.

³² Minn. Stat. § 326B.89, subd. 5.

³³ Aff. of K. Cooper, ¶ 11.

³⁴ *Id.*, Ex. 1 at FUND 0005.

³⁵ *Id.*

³⁶ Minn. Stat. § 326B.89, subd. 5 (emphasis added).

³⁷ See http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK_Forms_1207/B_018_1207.pdf (Explanation of Bankruptcy Discharge in a Chapter 7 Case, attached to U.S. Bankruptcy Court official form 18).

of money based on misconduct arising out of Woolhouse's remodeling contract with the Claimant.

The Administrative Law Judge is sympathetic to the difficulties that have been experienced by the Claimant due to the irresponsible actions of a licensed contractor. However, the statute that governs the handling of claims against the Contractor Recovery Fund explicitly requires that those seeking compensation from the Fund have a judgment against a licensed building contractor or remodeler. The undisputed facts in this matter demonstrate that Claimant does not have such a judgment, and the statute does not permit the Department to ignore that requirement.

For all of the reasons set forth above, the Administrative Law Judge concludes that there are no genuine issues of material fact remaining for hearing. The Department has shown that it is entitled as a matter of law to disposition of this matter in its favor. Accordingly, the Administrative Law Judge has granted the Department's Motion for Summary Disposition and denied Claimant's Cross Motion for Summary Disposition. Because the Claimant is not eligible to receive compensation from the Contractor Recovery Fund, the Commissioner's denial of her application is affirmed.

B. L. N.